

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5332 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ATMARAM M PATEL

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR JD AJMERA for Petitioner  
MR NN PANDYA for Respondent No.1  
MR SM MAZGAONKER for Respondent No.2  
None present for Respondent No.3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/07/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner filed this Special Civil Application against the action of the respondent No.3 not to implement the order passed by the respondent No.2. Further grievance has also been made against the action of respondent No.2 of not compelling the respondent No.3 to implement its order.

2. The respondent No.3 is a Trust which runs Akshay Primary School, which is a registered and approved institution. The petitioner was appointed in the school of respondent No.3 with effect from 8.1.81 under the order dated 6.1.81. The petitioner possessed the qualifications of S.S.C. & C.P.Ed. The petitioner was taking, at the relevant time, periods in standards V to VII. He has completed more than two years' service and as such, he was deemed to have been made permanent under the Rules. The petitioner, being a teacher possessing qualifications of S.S.C. and C.P.Ed., was entitled for the salary in the pay-scale of 290-560. The grievance of the petitioner is that the management was playing fraud and though taking receipts from him of paying full salary, but in fact he was paid only Rs.300/- p.m. The petitioner has objected to this action of respondent No.3 which has resulted in non payment of salary to the petitioner for the months of May, June and July 1983. The petitioner made a grievance before respondent No.2 by filing a representation. The respondent No.2 sent a letter to respondent No.3 on 27th April 1984, directing therein to treat the petitioner as full time teacher and to pay him grade accordingly. The management has come up with the case that the petitioner was not appointed as a full time teacher. The respondent No.2, under its letter dated 23rd August 1984, informed the management that the petitioner was appointed as full time teacher since 1981. It appears that the petitioner was not allowed to join his duties by the management, respondent No.4 and as such, the respondent No.2, under its letter dated 23rd August 1984 further directed the respondent No.3 to allow the petitioner to resume his duties within seven days. The petitioner went to resume his duties but the respondent No.3 has not allowed him to join his duties. Hence this petition before this Court.

3. On 3.1.85, this Court has been pleased to issue Rule and interim relief is granted in favour of petitioner in terms of para 10 (iii) of the petition. The interim relief granted by this Court was stayed for three weeks so as to enable the respondent No.3 to prefer appeal. No one is present on behalf of respondent No.3 to contend whether any L.P.A. has been preferred against the order of this Court granting interim relief on 3.1.85 or not. In para 10 (iii) of this petition, the petitioner prayed for interim relief in the following terms:

"pending admission, hearing and final disposal of this petition, this Hon'ble Court may be pleased

to issue an ad interim injunction directing the respondent No.3 to implement the order passed by the respondent No.2 dated 23.8.1984 and also restrain the respondent No.3 from in any manner preventing the petitioner from attending and discharging his duties as an assistant teacher in the school."

4. The counsel for the petitioner contended that in pursuance of interim relief, the petitioner was allowed to resume his duties and he is working in the school till this date. The reply to this writ petition has been filed on behalf of respondent No.3. The respondent No.3 has come up with the case that the service of the petitioner has been terminated by giving him valid notice, from the month of June 1984. It has further been stated that against the order of respondent No.2 dated 23rd August 1984, the respondent No.3 has filed Civil Suit No.4922 of 1984 in the Court of City Civil Court, at Ahmedabad. It has further been mentioned by respondent No.3 in its reply that the validity of schedule 'F' has been challenged by the primary education institutions before the Hon'ble Supreme Court and that matter is pending. The counsel for the respondent No.3 is not present. The counsel for the petitioner is also unable to bring to the notice of this Court what ultimately was decided in the Civil Suit No.4922 of 1984. The learned counsel for the respondent No.1, Shri N.N. Pandya is also unable to say what ultimately has been decided by the Supreme Court in the case, reference of which has been made in the reply filed by respondent No.3.

5. It is a matter of year 1984. The petitioner has been given final relief by way of interim relief and he is continuing his services for all these 12 years. Nothing has been brought on record by respondent No.3 that the work of petitioner was not satisfactory or that he was not otherwise fit for service. It is also not the case of the respondent No.3 in reply that the petitioner was not eligible for the appointment on the post of teacher. The respondent No.3 has also not come up with the case that the petitioner was lacking necessary requisite qualifications prescribed for the appointment of teacher. Taking into consideration totality of the facts and circumstances of the case, it appears that the petitioner, when raised voice against the arbitrary action of the management-respondent No.3 of giving him less pay than what he was entitled, this episode of not allowing the petitioner to join his duties etc. has taken place. No justification has been given whatsoever by respondent No.3 in its reply for termination of

service of the petitioner. The petitioner was appointed as a teacher in the year 1981 and as such, the termination of service of petitioner without any reason or ground cannot be said to be legal and justified. In the result, this Special Civil Application succeeds and the same is allowed. The termination of service of petitioner is hereby declared illegal. The petitioner is continuing his service in pursuance of the interim order of this Court and as such, no further relief is required to be granted. It is further made clear that it shall be open to respondent No.3 to file an application for bringing on record the ultimate decision of the civil suit referred by it in the reply and of the Hon'ble Supreme Court in the case where the validity of schedule 'F' has been challenged. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)